

AMENDED IN ASSEMBLY APRIL 26, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2692

Introduced by Assembly Member Brough
(Coauthor: Assembly Member Ridley-Thomas)

February 19, 2016

An act to amend ~~Section 19777.5 of, to add Article 4 (commencing with Section 7100) to Chapter 8 of Part 1 of Division 2 of, and to add Chapter 9.3 (commencing with Section 19740) to Part 10.2 of Division 2 of, Sections 6487.05, 19191, and 19192 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2692, as amended, Brough. ~~Personal income tax: corporation tax: sales and use taxes: tax penalty and fee waiver programs: deficiency determinations: qualifying retailers: income and corporation taxes: disclosure agreements.~~

The State Board of Equalization, if not satisfied with a return or the amount of sales tax, may compute and determine the amount required to be paid, as specified. Existing law provides that if the board finds that a qualifying retailer's failure to make a timely return or payment is due to reasonable cause and circumstances beyond its control, as provided, the qualifying retailer shall be relieved of specified penalties. Existing law additionally provides that requests for the relief of those penalties shall be filed under penalty of perjury.

This bill would revise the definition of a "qualifying retailer" to include a retailer that had gross receipts of less than \$1,000,000 in the previous 4 calendar quarters.

By requiring the qualifying retailer to file certain information under penalty of perjury, thereby expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Personal Income Tax Law and the Corporation Tax Law impose various penalties for failure to file specified returns.

Existing law authorizes the Franchise Tax Board to enter into voluntary disclosure agreements, as specified, with any qualified entity, qualified shareholder, qualified member, or a qualified beneficiary of a qualified trust, as defined, that permits, under the authority of the voluntary disclosure agreement, the Franchise Tax Board to waive its authority to assess taxes, additions to taxes, fees, or penalties, as described.

This bill would expand the above authorization to allow the Franchise Tax Board to enter into voluntary disclosure agreements with out-of-state limited partnerships and qualified small businesses, as defined, and would revise the definition of qualified trust to allow the trust to have resident beneficiaries, as provided.

~~Under existing law, the Franchise Tax Board collects and administers taxes imposed under the Personal Income Tax Law and the Corporation Tax Law. The State Board of Equalization collects and administers, among others, taxes imposed under the Sales and Use Tax Law, the Bradley-Burns Uniform Sales and Use Tax Law, and local laws imposed pursuant to the Transactions and Use Tax Law. Existing law sets forth various penalties, including penalties for the nonpayment or late payment of those taxes, and the failure to file or intentional filing of incorrect returns. Existing law established a tax amnesty program, conducted in 2005, for sales, use, personal income, and corporation tax liabilities due and payable for tax reporting periods or taxable years beginning before January 1, 2003.~~

~~This bill would require the State Board of Equalization and the Franchise Tax Board to administer tax penalty and fee waiver programs, as applicable, during the period beginning on February 1, 2017, to April 30, 2017, inclusive, or a period ending no later than June 30, 2017, for specified taxpayers with respect to penalties and fees for tax reporting~~

periods beginning before January 1, 2015. This bill would require the applicant to the waiver program to file the application under the penalty of perjury. By expanding the crime of perjury, this bill would impose state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6487.05 of the Revenue and Taxation
2 Code is amended to read:
3 6487.05. (a) Notwithstanding Section 6487, the period during
4 which a deficiency determination may be mailed to a qualifying
5 retailer is limited to three years after the last day of the calendar
6 month following the quarterly period for which the amount is
7 proposed to be determined. ~~For purposes of this section, a~~
8 ~~“qualifying retailer” is a retailer that meets all of the following~~
9 ~~conditions:~~
10 (b) *For purposes of this section, a “qualifying retailer” is a*
11 ~~retailer that either:~~
12 (1) ~~The retailer is~~ *Is* located outside this state, ~~and has not~~
13 ~~previously registered with the board. board, is engaged in business~~
14 ~~in this state, as defined in Section 6203, voluntarily registers with~~
15 ~~the board, and has not been previously contacted by the board or~~
16 ~~its agents regarding the provisions of Section 6203.~~
17 (2) ~~The retailer is engaged in business in this state, as defined~~
18 ~~in Section 6203.~~
19 (3) ~~The retailer voluntarily registers with the board.~~
20 (4) ~~The retailer has not been previously contacted by the board~~
21 ~~or its agents regarding the provisions of Section 6203.~~
22 (2) *Has gross receipts of less than one million dollars*
23 ~~(\$1,000,000) in the previous four calendar quarters.~~
24 (5) ~~As determined by the board, the~~
25 (c) *In addition to the criteria of subdivision (a), in order to*
26 ~~qualify as a “qualifying retailer,” the retailer’s failure to file a~~

1 return or failure to report or pay the tax or amount due required
2 by law was due to reasonable cause and was not a result of
3 negligence or intentional disregard of the law, or because of fraud
4 or an intent to evade the provisions of this ~~part~~, *part, as determined*
5 *by the board.*

6 ~~(b)~~

7 (d) If the board or its designee finds that the retailer's failure to
8 make a timely return or payment is due to reasonable cause and
9 circumstances beyond the retailer's control, and occurred
10 notwithstanding the exercise of ordinary care and the absence of
11 willful neglect, the retailer shall be relieved of the penalties
12 imposed pursuant to this part. Any retailer seeking relief of penalty
13 shall file a statement under penalty of perjury setting forth the facts
14 upon which he or she bases his or her claim for relief.

15 *SEC. 2. Section 19191 of the Revenue and Taxation Code is*
16 *amended to read:*

17 19191. (a) The Franchise Tax Board may enter into a voluntary
18 disclosure agreement with any *qualified small business*, qualified
19 entity, qualified shareholder, qualified member, or qualified
20 beneficiary as defined in Section 19192, that is binding on both
21 the Franchise Tax Board and the *qualified small business*, qualified
22 entity, qualified shareholder, qualified member, or qualified
23 beneficiary.

24 (b) The Franchise Tax Board shall do all of the following:

25 (1) Provide guidelines and establish procedures for *qualified*
26 *small businesses*, qualified entities and their qualified shareholders,
27 qualified members, or qualified beneficiaries to apply for voluntary
28 disclosure agreements.

29 (2) Accept applications on an anonymous basis from *qualified*
30 *small businesses*, qualified entities and their qualified shareholders,
31 qualified members, or qualified beneficiaries for voluntary
32 disclosure agreements.

33 (3) Implement procedures for accepting applications for
34 voluntary disclosure agreements through the National Nexus
35 Program administered by the Multistate Tax Commission.

36 (4) For purposes of considering offers from *qualified small*
37 *businesses*, qualified entities and their qualified shareholders,
38 qualified members, or qualified beneficiaries to enter into voluntary
39 disclosure agreements, take into account the following criteria:

1 (A) The nature and magnitude of the qualified entity's previous
2 presence and activity in this state and the facts and circumstances
3 by which the nexus of the qualified entity or qualified shareholder,
4 qualified member, or qualified beneficiary was established.

5 (B) The extent to which the weight of the factual circumstances
6 demonstrates that a prudent business person exercising reasonable
7 care would conclude that the previous activities and presence in
8 this state were or were not immune from taxation by this state by
9 reason of Public Law 86-272 or otherwise.

10 (C) Reasonable reliance on the advice of a person in a fiduciary
11 position or other competent advice that the qualified entity or
12 qualified shareholder, qualified member, or qualified beneficiary
13 activities were immune from taxation by this state.

14 (D) Lack of evidence of willful disregard or neglect of the tax
15 laws of this state on the part of the *qualified small business*,
16 qualified entity or qualified shareholder, qualified member, or
17 qualified beneficiary.

18 (E) Demonstrations of good faith on the part of the *qualified*
19 *small business*, qualified entity, qualified shareholder, qualified
20 member, or qualified beneficiary.

21 (F) Benefits that will accrue to the state by entering into a
22 voluntary disclosure agreement.

23 (5) Act on any application of a voluntary disclosure agreement
24 within 120 days of receipt.

25 (6) Enter into voluntary disclosure agreements with *qualified*
26 *small businesses*, qualified entities, qualified shareholders, qualified
27 members, or qualified beneficiaries, as authorized in subdivision
28 (a) and based on the criteria set forth in paragraph (4).

29 (c) Before any voluntary disclosure agreement becomes binding,
30 the Franchise Tax Board, itself, shall approve the agreement in the
31 following manner:

32 (1) The Executive Officer and Chief Counsel of the Franchise
33 Tax Board shall recommend and submit the voluntary disclosure
34 agreement to the Franchise Tax Board for approval.

35 (2) Each voluntary disclosure agreement recommendation shall
36 be submitted in a manner as to maintain the anonymity of the
37 taxpayer applying for the voluntary disclosure agreement.

38 (3) A recommendation for approval of a voluntary disclosure
39 agreement shall be approved or disapproved by the Franchise Tax

1 Board, itself, within 45 days of the submission of that
2 recommendation to the board.

3 (4) A recommendation of a voluntary disclosure agreement that
4 is not either approved or disapproved by the board within 45 days
5 of the submission of that recommendation shall be deemed
6 approved.

7 (5) Disapproval of a recommendation of a voluntary disclosure
8 agreement shall be made only by a majority vote of the Franchise
9 Tax Board.

10 (6) The members of the Franchise Tax Board shall not
11 participate in any voluntary disclosure agreement except as
12 provided in this subdivision.

13 (d) The voluntary disclosure agreement entered into by the
14 Franchise Tax Board and the *qualified small business*, qualified
15 entity, qualified shareholder, qualified member, or qualified
16 beneficiary as provided for in subdivision (a) shall to the extent
17 applicable specify that:

18 (1) The Franchise Tax Board shall with respect to a *qualified*
19 *small business*, qualified entity, qualified shareholder, qualified
20 member, or qualified beneficiary, except as provided in paragraph
21 (4), (6), or (9) of subdivision (a) of Section 19192:

22 (A) Waive its authority under this part, Part 10 (commencing
23 with Section 17001), or Part 11 (commencing with Section 23001)
24 to assess or propose to assess taxes, additions to tax, fees, or
25 penalties with respect to each taxable year ending prior to six years
26 from the signing date of the voluntary disclosure agreement.

27 (B) With respect to each of the six taxable years ending
28 immediately preceding the signing date of the voluntary disclosure
29 agreement, based on its discretion, agree to waive any or all of the
30 following:

31 (i) A penalty related to a failure to make and file a return, as
32 provided in Section 19131.

33 (ii) A penalty related to a failure to pay any amount due by the
34 date prescribed for payment, as provided in Section 19132.

35 (iii) An addition to tax related to an underpayment of estimated
36 tax, as provided in Section 19136.

37 (iv) A penalty related to Section 6810 or subdivision (a) of
38 Section 8810 of the Corporations Code, as provided in Section
39 19141 of this code.

1 (v) A penalty related to a failure to furnish information or
2 maintain records, as provided in Section 19141.5.

3 (vi) An addition to tax related to an underpayment of tax
4 imposed under Part 11 (commencing with Section 23001), as
5 provided in Section 19142.

6 (vii) A penalty related to a partnership required to file a return
7 under Section 18633, as provided in Section 19172.

8 (viii) A penalty related to a failure to file information returns,
9 as provided in Section 19183.

10 (ix) A penalty related to relief from contract voidability, as
11 provided in Section 23305.1.

12 (2) The qualified entity, qualified shareholder, qualified member,
13 or qualified beneficiary shall:

14 (A) With respect to each of the six taxable years ending
15 immediately preceding the signing date of the written agreement:

16 (i) Voluntarily and fully disclose on the *qualified small business*
17 or qualified entity's application all material facts pertinent to the
18 *qualified small business*, qualified entity's, shareholder's,
19 member's, or beneficiary's liability for any taxes imposed under
20 Part 10 (commencing with Section 17001) or Part 11 (commencing
21 with Section 23001).

22 (ii) Except as provided in paragraph (3), within 30 days from
23 the signing date of the voluntary disclosure agreement:

24 (I) File all returns required under this part, Part 10 (commencing
25 with Section 17001), or Part 11 (commencing with Section 23001).

26 (II) Pay in full any tax, interest, fee, and penalties, other than
27 those penalties specifically waived by the Franchise Tax Board
28 under the terms of the voluntary disclosure agreement, imposed
29 under this part, Part 10 (commencing with Section 17001), or Part
30 11 (commencing with Section 23001) in a manner as may be
31 prescribed by the Franchise Tax Board. Paragraph (1) of
32 subdivision (f) of Section 23153 shall not apply to qualified entities
33 admitted into the voluntary disclosure program.

34 (B) Agree to comply with all franchise and income tax laws of
35 this state in subsequent taxable years by filing all returns required
36 and paying all amounts due under this part, Part 10 (commencing
37 with Section 17001), or Part 11 (commencing with Section 23001).

38 (3) The Franchise Tax Board may extend the time for filing
39 returns and paying amounts due to 120 days from the signing date
40 of the voluntary disclosure agreement or to the latest extended due

1 date of the return for a taxable year for which relief is granted,
2 whichever is later.

3 (e) An addition to tax under Section 19136 or 19142 shall not
4 be made for any underpayment of estimated tax attributable to the
5 underpayment of an installment of estimated tax due before the
6 signing date of the voluntary disclosure agreement.

7 (f) The amendments to this section made by Chapter 954 of the
8 Statutes of 1996 shall apply to taxable years beginning on or after
9 January 1, 1997.

10 (g) The amendments to this section made by Chapter 543 of the
11 Statutes of 2001 shall apply to voluntary disclosure agreements
12 entered into on or after January 1, 2002.

13 (h) The amendments to this section made by Chapter 543 of the
14 Statutes of 2001 shall apply to voluntary disclosure agreements
15 entered into on or after January 1, 2005.

16 (i) The amendments to this section made by Chapter 296 of the
17 Statutes of 2011 shall apply to voluntary disclosure agreements
18 entered into on or after January 1, 2011.

19 *SEC. 3. Section 19192 of the Revenue and Taxation Code is*
20 *amended to read:*

21 19192. For purposes of this article, the following terms have
22 the following meanings:

23 (a) (1) “Qualified entity” means an entity that is all of the
24 following:

25 (A) A corporation, as defined in Section 23038, a limited
26 liability company, as defined in subdivision (d) of Section 17941,
27 *limited partnership, as defined in Section 17935*, or a qualified
28 trust, as defined in paragraph (7).

29 (B) An entity, including any predecessors to the entity, that
30 previously has never filed a return with the Franchise Tax Board
31 pursuant to this part, Part 10 (commencing with Section 17001),
32 or Part 11 (commencing with Section 23011).

33 (C) An entity, including any predecessors to the entity, that
34 previously has not been the subject of an inquiry by the Franchise
35 Tax Board with respect to liability for any of the taxes imposed
36 under Part 10 (commencing with Section 17001) or Part 11
37 (commencing with Section 23001).

38 (D) An entity that voluntarily comes forward prior to any
39 unilateral contact from the Franchise Tax Board, makes application
40 for a voluntary disclosure agreement in a form and manner

1 prescribed by the Franchise Tax Board, and makes a full and
2 accurate statement of its activities in this state for the six
3 immediately preceding taxable years.

4 (2) (A) Notwithstanding paragraph (1), a qualified entity does
5 not include any of the following:

6 (i) An entity that is organized and existing under the laws of
7 this state.

8 (ii) An entity that is qualified or registered with the office of
9 the Secretary of State.

10 (iii) An entity that maintains and staffs a permanent facility in
11 this state.

12 (B) For purposes of this paragraph, the storing of materials,
13 goods, or products in a public warehouse pursuant to a public
14 warehouse contract does not constitute maintaining a permanent
15 facility in this state.

16 (3) “Qualified shareholder” means an individual that is all of
17 the following:

18 (A) A nonresident on the signing date of the voluntary disclosure
19 agreement.

20 (B) A shareholder of an “S” corporation (defined in Section
21 23800) that has applied for a voluntary disclosure agreement under
22 this article under which all material facts pertinent to the
23 shareholder’s liability would be disclosed on that “S” corporation’s
24 voluntary disclosure agreement as required under clause (i) of
25 subparagraph (A) of paragraph (2) of subdivision (d) of Section
26 19191.

27 (4) Notwithstanding paragraph (3), subparagraph (B) of
28 paragraph (1) of subdivision (d) of Section 19191 shall not apply
29 to any of the six taxable years immediately preceding the signing
30 date that the qualified shareholder was a California resident
31 required to file a California tax return, nor to any penalties or
32 additions to tax attributable to income other than the California
33 source income from the “S” corporation that filed an application
34 under this article.

35 (5) “Qualified member” means an individual, corporation, or
36 limited liability company that is all of the following:

37 (A) (i) In the case of an individual, is a nonresident on the
38 signing date of the voluntary disclosure agreement.

39 (ii) In the case of a corporation or limited liability company, is
40 not either of the following:

1 (I) Organized under the laws of this state.

2 (II) Qualified or registered with the office of the Secretary of
3 State.

4 (B) A member of a limited liability company that has applied
5 for a voluntary disclosure agreement under this article under which
6 all material facts pertinent to the member's liability would be
7 disclosed on that limited liability company's voluntary disclosure
8 agreement as required under clause (i) of subparagraph (A) of
9 paragraph (2) of subdivision (d) of Section 19191.

10 (6) Notwithstanding paragraph (5), in the case of a qualified
11 member who is an individual, subparagraph (B) of paragraph (1)
12 of subdivision (d) of Section 19191 shall not apply to any of the
13 six taxable years immediately preceding the signing date that the
14 qualified member was a California resident required to file a
15 California tax return, nor to any penalties or additions to tax
16 attributable to income other than the California source income
17 from the limited liability company that filed an application under
18 this article.

19 (7) "Qualified trust" means a trust ~~that meets both of the~~
20 ~~following:~~ *in which the administration of the trust has never been*
21 *performed in California. For purposes of this paragraph,*
22 *administrative activities performed in California would be deemed*
23 *to be performed outside of California if those activities were*
24 *inconsequential to the overall administration of the trust.*

25 (A) (i) ~~The administration of the trust has never been performed~~
26 ~~in California.~~

27 (ii) ~~For purposes of this subparagraph, administrative activities~~
28 ~~performed in California would be deemed to be performed outside~~
29 ~~of California if those activities were inconsequential to the overall~~
30 ~~administration of the trust.~~

31 (B) ~~For six taxable years ending immediately preceding the~~
32 ~~signing date of the voluntary disclosure agreement, the trust has~~
33 ~~had no resident beneficiaries (other than a beneficiary whose~~
34 ~~interest in that trust is contingent; a beneficiary's trust interest is~~
35 ~~not contingent if the trust has made any distribution to the resident~~
36 ~~beneficiary at any time during the six taxable years ending~~
37 ~~immediately preceding the signing date of the voluntary disclosure~~
38 ~~agreement).~~

39 (8) "Qualified beneficiary" means an individual who is all of
40 the following:

1 (A) A nonresident on the signing date of the voluntary disclosure
2 agreement and a nonresident during each of the six taxable years
3 ending immediately preceding the signing date of the voluntary
4 disclosure agreement.

5 (B) A beneficiary of a qualified trust that has applied for a
6 voluntary disclosure agreement under this article under which all
7 material facts pertinent to the beneficiary's liability would be
8 disclosed on that trust's voluntary disclosure agreement as required
9 under clause (i) of subparagraph (A) of paragraph (2) of subdivision
10 (d) of Section 19191.

11 (9) Notwithstanding paragraph (8), subparagraph (B) of
12 paragraph (1) of subdivision (d) of Section 19191 shall not apply
13 to any penalties or additions to tax attributable to income other
14 than income from the trust that filed an application under this
15 article.

16 (10) *"Qualified small business" means an entity with a total*
17 *income of less than one million dollars (\$1,000,000) in the previous*
18 *taxable year.*

19 (b) "Signing date" of the voluntary disclosure agreement means
20 the date on which a person duly authorized by the Franchise Tax
21 Board signs the agreement.

22 (c) The amendments to this section made by Chapter 954 of the
23 Statutes of 1996 shall apply to taxable years beginning on or after
24 January 1, 1997.

25 (d) The amendments to this section made by Chapter 543 of the
26 Statutes of 2001 shall apply to voluntary disclosure agreements
27 entered into on or after January 1, 2002.

28 (e) The amendments to this section made by the act adding this
29 subdivision shall apply to voluntary disclosure agreements entered
30 into on or after January 1, 2005.

31 *SEC. 4. No reimbursement is required by this act pursuant to*
32 *Section 6 of Article XIII B of the California Constitution because*
33 *the only costs that may be incurred by a local agency or school*
34 *district will be incurred because this act creates a new crime or*
35 *infraction, eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section 17556 of*
37 *the Government Code, or changes the definition of a crime within*
38 *the meaning of Section 6 of Article XIII B of the California*
39 *Constitution.*

1 SECTION 1.—Article 4 (commencing with Section 7100) is
2 added to Chapter 8 of Part 1 of Division 2 of the Revenue and
3 Taxation Code, to read:

4
5 Article 4. Tax Penalty Waiver Program
6

7 7100.—The board shall develop and administer a tax penalty
8 waiver program for taxpayers subject to Part 1 (commencing with
9 Section 6001), as provided in this article.

10 7100.2.—The tax penalty waiver program shall be conducted
11 for a three-month period beginning February 1, 2017 to April 30,
12 2017, inclusive, or during a timeframe ending no later than June
13 30, 2017. The program shall apply to tax liabilities due and payable
14 for tax reporting periods beginning before January 1, 2015.

15 7100.4.—(a) For any taxpayer who meets the requirements of
16 Section 7100.6:

17 (1) The board shall waive all penalties imposed by this part, for
18 the tax reporting periods for which a waiver is allowed for the
19 nonreporting or underreporting of tax liabilities or the nonpayment
20 of any taxes previously determined or proposed to be determined.

21 (2) Except as provided in subdivision (b), no criminal action
22 shall be brought against the taxpayer, for the tax reporting periods
23 for which a waiver is requested, for the nonreporting or
24 underreporting of tax liabilities.

25 (b) This section does not apply to violations of this part for
26 which, as of the first day of the waiver period specified in Section
27 7100.2, (1) the taxpayer is on notice of a criminal investigation by
28 a complaint having been filed against him or her or by written
29 notice having been mailed to him or her that he or she is under
30 criminal investigation, or (2) a court proceeding has already been
31 initiated.

32 (c) No refund or credit shall be granted of any penalty paid
33 prior to the time the taxpayer makes a request for a waiver pursuant
34 to Section 7100.6.

35 7100.6.—(a) This article shall apply to any taxpayer who, during
36 the waiver period specified in Section 7100.2, meets all of the
37 following:

38 (1) Is eligible to participate in the tax penalty waiver program.

1 ~~(2) Files a completed waiver application with the board, signed~~
2 ~~under penalty of perjury, to participate in the tax penalty waiver~~
3 ~~program.~~

4 ~~(3) Within 60 days after the conclusion of the waiver period,~~
5 ~~does all of the following:~~

6 ~~(A) Files completed tax returns for all tax reporting periods for~~
7 ~~which he or she has not previously filed a tax return and files~~
8 ~~completed amended returns for all tax reporting periods for which~~
9 ~~he or she underreported his or her tax liability.~~

10 ~~(B) Pays in full the taxes and interest due for all periods for~~
11 ~~which a waiver is requested, or applies for an installment agreement~~
12 ~~under subdivision (b).~~

13 ~~(C) For taxpayers who have not paid in full any tax liabilities~~
14 ~~due and payable for tax reporting periods beginning before January~~
15 ~~1, 2015, pays in full the taxes and interest due for each period for~~
16 ~~that portion of the proposed determination for each period for~~
17 ~~which a waiver is requested or applies for an installment payment~~
18 ~~agreement under subdivision (b).~~

19 ~~(4) In the case of any taxpayer that has filed for bankruptcy~~
20 ~~protection under Title 11 of the United States Code, submits an~~
21 ~~order from a Federal Bankruptcy Court allowing the taxpayer to~~
22 ~~participate in the waiver program.~~

23 ~~(b) The board may enter into an installment payment agreement~~
24 ~~in lieu of the complete payment required under subparagraph (B)~~
25 ~~of paragraph (3) of subdivision (a), but only if final payment under~~
26 ~~the terms of that installment payment agreement is due and is paid~~
27 ~~no later than June 30, 2018. The installment payment agreement~~
28 ~~shall include interest on the outstanding amount due at the rate~~
29 ~~prescribed by law. Failure by the taxpayer to fully comply with~~
30 ~~the terms of the installment payment agreement shall render the~~
31 ~~waiver of penalties null and void, unless the board determines that~~
32 ~~the failure was due to reasonable causes, and the total amount of~~
33 ~~tax, interest, and all penalties shall be immediately due and payable.~~

34 ~~(c) The application required under paragraph (2) of subdivision~~
35 ~~(a) shall be in the form and manner specified by the board, but in~~
36 ~~no case shall a mere payment of any taxes and interest due, in~~
37 ~~whole or in part, for any period otherwise eligible for a waiver~~
38 ~~under this part, be deemed to constitute an acceptable waiver~~
39 ~~application under this part. For purposes of the preceding sentence,~~
40 ~~the application of a refund from one period to offset a tax liability~~

1 ~~for another period otherwise eligible for a waiver shall not be~~
2 ~~allowed without the filing of a waiver application under this part.~~

3 ~~7100.8. The board shall issue forms and instructions and take~~
4 ~~other actions needed to implement this article. The provisions~~
5 ~~contained in subdivision (c) of Section 19745, to the extent feasible~~
6 ~~and practical, shall also apply to the board.~~

7 ~~7100.10. The board shall adequately publicize the tax penalty~~
8 ~~waiver program so as to maximize public awareness of the~~
9 ~~participation in the program. The board shall coordinate to the~~
10 ~~highest degree possible its publicity efforts and other actions taken~~
11 ~~in implementing this article with similar programs administered~~
12 ~~by the Franchise Tax Board.~~

13 ~~7100.12. Subdivision (b) of Section 19746, to the extent~~
14 ~~feasible and practical, shall also apply to the board.~~

15 ~~SEC. 2. Chapter 9.3 (commencing with Section 19740) is added~~
16 ~~to Part 10.2 of Division 2 of the Revenue and Taxation Code, to~~
17 ~~read:~~

18
19 ~~CHAPTER 9.3. TAX PENALTY AND FEE WAIVER PROGRAM~~
20

21 ~~19740. The Franchise Tax Board shall administer a tax penalty~~
22 ~~and fee waiver program for taxpayers subject to Part 10~~
23 ~~(commencing with Section 17001) and Part 11 (commencing with~~
24 ~~Section 23001), as provided in this chapter.~~

25 ~~19741. The tax penalty and fee waiver program shall be~~
26 ~~conducted during a three-month period beginning February 1,~~
27 ~~2017, to April 31, 2017, inclusive, or during a timeframe ending~~
28 ~~no later than June 30, 2017, pursuant to Section 19743. The~~
29 ~~program shall apply to tax liabilities for taxable years beginning~~
30 ~~before January 1, 2015.~~

31 ~~19742. (a) For any taxpayer who meets each of the~~
32 ~~requirements of Section 19743 both of the following apply:~~

33 ~~(1) The Franchise Tax Board shall waive all unpaid penalties~~
34 ~~and fees imposed by this part for each taxable year for which a~~
35 ~~waiver is allowed, but only to the extent of the amount of any~~
36 ~~penalty or fee that is owed as a result of previous nonreporting or~~
37 ~~underreporting of tax liabilities or prior nonpayment of any taxes~~
38 ~~previously assessed or proposed to be assessed for that taxable~~
39 ~~year.~~

1 ~~(2) Except as provided in subdivision (b), no criminal action~~
2 ~~shall be brought against the taxpayer for the taxable years for which~~
3 ~~a waiver is allowed for the nonreporting or underreporting of tax~~
4 ~~liabilities or the nonpayment of any taxes previously assessed or~~
5 ~~proposed to be assessed.~~

6 ~~(b) This chapter shall not apply to violations of this part, for~~
7 ~~which, as of February 1, 2017, any of the following applies:~~

8 ~~(1) The taxpayer is on notice of a criminal investigation by a~~
9 ~~complaint having been filed against the taxpayer.~~

10 ~~(2) The taxpayer is under criminal investigation.~~

11 ~~(3) A court proceeding has already been initiated.~~

12 ~~(c) This section shall not apply to any nonreported or~~
13 ~~underreported tax liability amounts attributable to tax shelter items~~
14 ~~that could have been reported under either the voluntary compliance~~
15 ~~initiative under Chapter 9.5 (commencing with Section 19751);~~
16 ~~the Internal Revenue Service's Offshore Voluntary Compliance~~
17 ~~Initiative described in Revenue Procedure 2003-11, or the Internal~~
18 ~~Revenue Service's Voluntary Disclosure Program.~~

19 ~~(d) No refund or credit shall be granted with respect to any~~
20 ~~penalty or fee paid with respect to a taxable year prior to the time~~
21 ~~the taxpayer makes a request for a waiver for that taxable year~~
22 ~~pursuant to Section 19743.~~

23 ~~(e) Notwithstanding Chapter 6 (commencing with Section~~
24 ~~19301), a taxpayer may not file a claim for refund or credit for any~~
25 ~~amounts paid in connection with the tax penalty and fee waiver~~
26 ~~program under this chapter.~~

27 ~~19743. (a) This chapter shall apply to any taxpayer who~~
28 ~~satisfies all of the following requirements:~~

29 ~~(1) During the tax penalty and fee waiver program period~~
30 ~~specified in Section 19741, is eligible to participate in the waiver~~
31 ~~program.~~

32 ~~(2) During the tax penalty and fee waiver program period~~
33 ~~specified in Section 19741, files a completed waiver application~~
34 ~~with the Franchise Tax Board, signed under penalty of perjury,~~
35 ~~electing to participate in the tax penalty and fee waiver program.~~

36 ~~(3) Within 60 days after the conclusion of the waiver period,~~
37 ~~does the following:~~

38 ~~(A) (i) For any taxable year eligible for the tax penalty and fee~~
39 ~~waiver program where the taxpayer has not filed any required~~
40 ~~return, files a completed original tax return for that year.~~

1 (ii) ~~For any taxable year eligible for the tax penalty and fee~~
2 ~~waiver program where the taxpayer filed a return but underreported~~
3 ~~tax liability on that return, files an amended return for that year.~~

4 ~~(B) Pays in full any taxes and interest due for each taxable year~~
5 ~~described in clauses (i) and (ii) of subparagraph (A), as applicable,~~
6 ~~for which a waiver is requested, or applies for an installment~~
7 ~~payment agreement under subdivision (b). For taxpayers who have~~
8 ~~not paid in full any taxes previously proposed to be assessed, pays~~
9 ~~in full the taxes and interest due for that portion of the proposed~~
10 ~~assessment for each taxable year for which a waiver is requested~~
11 ~~or applies for an installment payment agreement under subdivision~~
12 ~~(b).~~

13 ~~(4) For purposes of complying with the full payment provisions~~
14 ~~of paragraph (3) of subdivision (a), if the full amount due is paid~~
15 ~~within the period set forth in paragraph (3) of subdivision (c) of~~
16 ~~Section 19101 after the date the Franchise Tax Board mails a notice~~
17 ~~resulting from the filing of a waiver application or the full amount~~
18 ~~is paid within 60 days after the conclusion of the tax penalty and~~
19 ~~fee waiver program period, the full amount due shall be treated as~~
20 ~~paid during the waiver period.~~

21 ~~(5) In the case of any taxpayer that has filed for bankruptcy~~
22 ~~protection under Title 11 of the United States Code, submits an~~
23 ~~order from a Federal Bankruptcy Court allowing the taxpayer to~~
24 ~~participate in the waiver program.~~

25 ~~(b) (1) For purposes of complying with the full payment~~
26 ~~provisions of subparagraph (B) of paragraph (3) of subdivision~~
27 ~~(a), the Franchise Tax Board may enter into an installment payment~~
28 ~~agreement, but only if final payment under the terms of that~~
29 ~~installment payment agreement is due and is paid no later than~~
30 ~~June 30, 2018.~~

31 ~~(2) Any installment payment agreement authorized by this~~
32 ~~subdivision shall include interest on the outstanding amount due~~
33 ~~at the rate prescribed in Section 19521.~~

34 ~~(3) Failure by the taxpayer to fully comply with the terms of an~~
35 ~~installment payment agreement under this subdivision shall render~~
36 ~~the waiver of penalties and fees under Section 19732 null and void,~~
37 ~~unless the Franchise Tax Board determines that the failure was~~
38 ~~due to reasonable cause and not due to willful neglect.~~

1 ~~(4) In the case of any failure described under paragraph (3), the~~
2 ~~total amount of tax, interest, fees, and all penalties shall become~~
3 ~~immediately due and payable.~~

4 ~~(e) (1) The application required under paragraph (2) of~~
5 ~~subdivision (a) shall be in the form and manner specified by the~~
6 ~~Franchise Tax Board, but in no case shall a mere payment of any~~
7 ~~taxes and interest due, in whole or in part, for any taxable year~~
8 ~~otherwise eligible for a waiver under this part, be deemed to~~
9 ~~constitute an acceptable waiver application under this part. For~~
10 ~~purposes of the prior sentence, the application of a refund from~~
11 ~~one taxable year to offset a tax liability from another taxable year~~
12 ~~otherwise eligible for a waiver shall not, without the filing of a~~
13 ~~waiver application, be deemed to constitute an acceptable waiver~~
14 ~~application under this part.~~

15 ~~(2) The Legislature specifically intends that the Franchise Tax~~
16 ~~Board, in administering the waiver application requirement under~~
17 ~~this part, make the waiver application process as streamlined as~~
18 ~~possible to ensure participation in the waiver program will be~~
19 ~~available to as many taxpayers as possible without otherwise~~
20 ~~compromising the Franchise Tax Board's ability to enforce and~~
21 ~~collect the taxes imposed under Part 10 (commencing with Section~~
22 ~~17001) and Part 11 (commencing with Section 23001).~~

23 ~~(d) Upon the conclusion of the tax penalty and fee waiver~~
24 ~~program period, the Franchise Tax Board may propose a deficiency~~
25 ~~upon any return filed pursuant to subparagraph (A) of paragraph~~
26 ~~(3) of subdivision (a), impose penalties and fees, or initiate criminal~~
27 ~~action under this part with respect to the difference between the~~
28 ~~amount shown on that return and the correct amount of tax. This~~
29 ~~action shall not invalidate any waivers previously granted under~~
30 ~~Section 19732.~~

31 ~~(e) All revenues derived pursuant to subdivision (c) shall be~~
32 ~~subject to Sections 19602 and 19604.~~

33 ~~19744. Notwithstanding any other provision of this chapter, if~~
34 ~~any overpayment of tax shown on an original or amended return~~
35 ~~filed under this article is refunded or credited within 180 days after~~
36 ~~the return is filed, no interest shall be allowed under Section 19340~~
37 ~~on that overpayment.~~

38 ~~19745. — (a) The Franchise Tax Board may issue forms,~~
39 ~~instructions, notices, rules, or guidelines, and take any other~~
40 ~~necessary actions, needed to implement this chapter, specifically~~

1 including any forms, instructions, notices, rules, or guidelines that
2 specify the form and manner of any acceptable form of waiver
3 application described in Section 19743.

4 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of
5 Division 3 of Title 2 of the Government Code does not apply to
6 any standard, criterion, procedure, determination, rule, notice, or
7 guideline established or issued by the Franchise Tax Board
8 pursuant to this chapter.

9 19746. (a) The Franchise Tax Board shall conduct a public
10 outreach program and adequately publicize the tax penalty and fee
11 waiver program so as to maximize public awareness and to make
12 taxpayers aware of the program. In addition, the Franchise Tax
13 Board shall make taxpayers aware of the new and increased
14 penalties associated with taxpayer failure to participate in the tax
15 penalty and fee waiver program.

16 (b) The Franchise Tax Board shall make reasonable efforts to
17 identify taxpayer liabilities and, to the extent practicable, will send
18 written notice to taxpayers of their eligibility for the tax penalty
19 and fee waiver program. However, failure of the Franchise Tax
20 Board to notify a taxpayer of the existence or correct amount of a
21 tax liability eligible for waiver shall not preclude the taxpayer from
22 participating in the tax penalty and fee waiver program.

23 SEC. 3. Section 19777.5 of the Revenue and Taxation Code
24 is amended to read:

25 19777.5. (a) There shall be added to the tax for each taxable
26 year for which amnesty could have been requested:

27 (1) For amounts that are due and payable on the last day of the
28 amnesty period, an amount equal to 50 percent of the accrued
29 interest payable under Section 19101 for the period beginning on
30 the last date prescribed by law for the payment of that tax
31 (determined without regard to extensions) and ending on the last
32 day of the amnesty period specified in Section 19731.

33 (2) For amounts that become due and payable after the last date
34 of the amnesty period, an amount equal to 50 percent of the interest
35 computed under Section 19101 on any final amount, including
36 final deficiencies and self-assessed amounts, for the period
37 beginning on the last date prescribed by law for the payment of
38 the tax for the year of the deficiency (determined without regard
39 to extensions) and ending on the last day of the amnesty period
40 specified in Section 19731.

1 ~~(3) For purposes of paragraph (2), Sections 19107, 19108,~~
2 ~~19110, and 19113 shall apply in determining the amount computed~~
3 ~~under Section 19101.~~

4 ~~(b) The penalty imposed by this section is in addition to any~~
5 ~~other penalty imposed under Part 10 (commencing with Section~~
6 ~~17001), Part 11 (commencing with Section 23001), or this part.~~

7 ~~(c) This section does not apply to any amounts that are treated~~
8 ~~as paid during the amnesty program period under paragraph (4)~~
9 ~~of subdivision (a) of Section 19733 or paragraph (1) of subdivision~~
10 ~~(b) of Section 19733.~~

11 ~~(d) Article 3 (commencing with Section 19031), (relating to~~
12 ~~deficiency assessments) shall not apply with respect to the~~
13 ~~assessment or collection of any penalty imposed by subdivision~~
14 ~~(a).~~

15 ~~(e) (1) Notwithstanding Chapter 6 (commencing with Section~~
16 ~~19301), a taxpayer may not file a claim for refund or credit for any~~
17 ~~amounts paid in connection with the penalty imposed in subdivision~~
18 ~~(a), except as provided in paragraph (2).~~

19 ~~(2) A taxpayer may file a claim for refund for any amounts paid~~
20 ~~to satisfy a penalty imposed under subdivision (a) on the grounds~~
21 ~~that the amount of the penalty was not properly computed by the~~
22 ~~Franchise Tax Board.~~

23 ~~(f) Notwithstanding Section 18415, the amendments made to~~
24 ~~this section by the act adding this subdivision shall apply to~~
25 ~~penalties imposed under paragraph (2) of subdivision (a) after~~
26 ~~March 31, 2005.~~

27 ~~(g) This section shall not apply to the waiver period provided~~
28 ~~for in Part 9.4 (commencing with Section 19740).~~

29 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
30 ~~Section 6 of Article XIII B of the California Constitution because~~
31 ~~the only costs that may be incurred by a local agency or school~~
32 ~~district will be incurred because this act creates a new crime or~~
33 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
34 ~~for a crime or infraction, within the meaning of Section 17556 of~~
35 ~~the Government Code, or changes the definition of a crime within~~
36 ~~the meaning of Section 6 of Article XIII B of the California~~
37 ~~Constitution.~~